

DISCUSSION KICK-OFF

When climate change hits the Arctic: what to make of recent rules and approaches

BIRGIT PETERS — 4 May, 2016



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Climate change in the Arctic

Climate change, in particular global warming, is an inevitable fact. Nonetheless, it will hit different regions of the world differently. Of all regions, the area most affected by future temperature change is the Arctic. This is the part of the global north, which is situated above 66,3 degrees latitude. Here, differences in temperatures are predicted to rise at least 3 degrees Celsius compared to the average temperature for the period of 1986-2005.

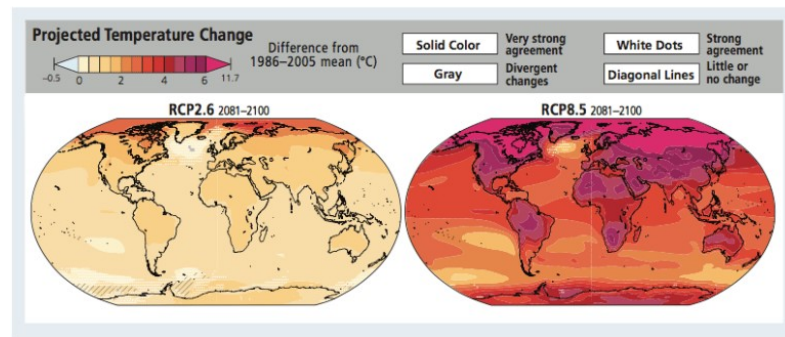


Figure from the 2014 UNFCCC Climate Change Report, Part A, Global and Sectoral Aspects, at: <http://www.ipcc.ch/report/ar5/>

For the Arctic, climate change is both curse and blessing. On the one hand, the melting of ice caps and permafrost soil will open the region for a variety of uses which were unthinkable before. Land can be farmed, but also shipping and the extraction of natural resources on and off coast become attractive. About a quarter of the world's reservoirs for oil and gas are predicted to be situated here. On the other hand, the warming of sea and climate, plus increased economic use of the marine and natural resources existent in that region imply a threat to the Arctic environment and biodiversity: In addition to inevitable pollution, many species which have the Arctic as their unique habitat, will need to adapt to changes in weather conditions, or die, if unable to do so. An often cited example is the polar bear, which is predicted to be extinct in about 100 years.

How to protect the Arctic from climate change induced pollution and degradation?

Considering the regulatory approaches on how to protect the Arctic from those threats, past and present approaches diverge significantly.

a. Traditional regulatory approaches: the Arctic as common heritage or concern of man and humankind

In the past, regulatory suggestions for protecting the Arctic from the adverse effects of climate change have almost exclusively focused on a strictly prohibitive approach. Until 2008, the European Union, notably the European Parliament, the World Wildlife Fund, as well as the International Union for the Conservation of Nature suggested a regulatory regime for the Arctic, which was strongly built on the model of the Antarctic treaty. Thus, regulatory propositions included all, or a combination of the following components:

- The Arctic is recognized as common heritage or concern of man or humankind.
- The utilization of natural resources is prohibited or restricted, to the extent that only utilization for scientific research is allowed.
- Shipping for commercial purposes is prohibited.
- The Arctic is administered by an international body.

Those suggestions, however, did not find sufficient international support. Too many practical and regulatory difficulties persisted: unlike Antarctica, the Arctic has about four million inhabitants, many of which belong to indigenous communities, which subsist on the utilization of the natural resources available in the region. In addition, if considering pollution from ships or the protection of the species living in the Arctic, even strict protection schemes seemed ineffective: much of the pollution which reached this area was emitted from outside the Arctic. This was also true for much of the Arctic fauna: much of the waterfowl breeding in the Arctic over summer travelled to the region from several thousand miles away.

b. New rules for the Arctic

Recent regulatory approaches thus took a different turn. In 2014, the Arctic Council, a regional international organization comprised of the “Arctic Five” (U.S., Denmark, Norway, Russia and Canada) and several observer states as well as indigenous and non-governmental organizations, completed the Arctic Biodiversity Assessment, a registry of the fauna and flora to be found in the region, which can serve as a basis for decisions about their further protection. The Council collaborated since 2011 with the bodies of the Convention on Biological Diversity to provide relevant data in support of decisions to include parts of the Arctic in the CBD’s (marine) protected area system.

Most notably however –and contrary to its previous policy to achieve collaboration and inter-governmental cooperation via non-binding agreements– the Arctic Council adopted in 2013 its first Agreement on Cooperation on Marine Oil Pollution (<http://arctic-council.org/eppr/agreement-on-cooperation-on-marine-oil-pollution-preparedness-and-response-in-the-arctic/>), which establishes an emergency and rescue system between Arctic neighbours and a system of mutual assistance in cases of oil spills.

Finally, the International Maritime Organization (IMO) has been at the forefront of regulatory developments regarding Arctic marine environmental protection, in particular concerning shipping and marine transport and pollution. In May 2015, the organization adopted the Polar Code for Ships operating in Polar Waters, which will enter into force in 2017 and which will make binding amendments to the MARPOL (International Convention on the prevention of pollution

from shops) and SOLAS (International Convention on the Safety of Life at Sea) conventions.

What to make of those regulatory developments?

The new rules for the Arctic can teach several lessons about the development of new environmental rules.

First, regarding the form and way the new rules are made, much of the regulatory activity is *non-traditional*, in the sense that it is either *regionally* motivated, i.e. coming from within the Arctic Council, or *non-traditionally consensual*. This true for the rules made by the IMO, in particular: it can decide on amendments to existing agreements using in its tacit acceptance procedure which assumes consent by those members of the organization after a particular date, unless they have objected to the coming into force of the new regulation by that particular date.

Second, applying a “common heritage or concern” approach to the Arctic seemed no viable option. Interests concerning resource extraction and shipping are too dominant. Instead of absolute protection, the new rules for the Arctic focus more on the idea of sustainability. This means, the rules aim at environmental protection, while allowing economic development, for present and future generations (see principles 1, 4 and 5).

Whereas this will be beneficiary for the economic development of the region, the necessary balancing of all interests – social, environmental and economic – certainly results in a lower standard of protection than the “common heritage or common concern” approach.

A response to this post can be found here.

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ISSN 2510-2567

Tags: *Climate change, International Environmental Law*



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